Annex 12

Summaries of Selected Cases Concluded by Preliminary inquiries

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Cases Concluded under Rendering Assistance/Clarification

Correctional Services Department ("CSD")

Case No. OMB 2008/3902

Treatment of inmates – stopping an inmate from taking food

The Complaint

The complainant, a prison inmate, fell ill and was taken to a public hospital. Allegedly, noting that he was weak, the doctor instructed the nurse to give him some food, but a CSD officer stopped him from taking it.

Inmates Not Allowed to Eat Freely

2. The CSD officers who escorted the complainant to the hospital maintained that the doctor had not advised that the complainant needed food. The complainant had actually asked for dinner at the hospital and they explained to him at once that inmates were not allowed to take unauthorised food. Furthermore, the prison had already reserved dinner for him.

Our Findings

3. The hospital staff recalled having handed some bread and milk to a hungry prison inmate on that day.

4. We noted that inmates normally have dinner at the prison at 4:30 pm. According to the records, the complainant was taken to the hospital at 4 pm and stayed there until 7:47 pm. His hunger was, therefore, understandable. While we appreciated the need for restrictions on inmates' consumption of food, we considered that the CSD officers should have exercised discretion in these special circumstances, e.g. when the doctor recommended food for the inmate or when the inmate had not eaten for quite some time. We urged CSD to review its practice.

A case of lack of compassion and flexibility

ANNEX 12

SUMMARIES OF SELECTED CASES CONCLUDED BY PRELIMINARY INQUIRIES

Electrical and Mechanical Services Department ("E&MSD")

Case No. OMB 2008/1043

Electrical installations – failing to order rectification of defective installations in a rented flat

The Complaint

The complainant lodged a complaint with E&MSD alleging that the electrical installations in his rented unit did not comply with safety requirements. Following a site inspection, E&MSD staff issued notification to the owner to demand rectification. However, the owner did not comply.

2. The complainant alleged dereliction of duty on the part of E&MSD as it had failed to order the owner to rectify the defects so that the problem remained unresolved.

Dubious Allegations

3. The complainant said that before reporting the faulty installations to E&MSD headquarters, he had forwarded the Department's notification letter to the owner by registered mail. However, we learned from the Post Office ("PO") that actually he had posted the letter later than the date he claimed.

4. When we sought clarification from the complainant, he explained that the date provided by PO was that of the "second" letter he posted. Before that, he had already sent a letter to the owner by registered mail but he had lost the receipt for it.

5. We asked for further details of his posting the letter the "first time" (e.g. when and where he had posted it) and reasons for not providing us with the information initially. He responded that he had forgotten "such trivial matters".

6. Meanwhile, the complainant was able to remember clearly such details as the date of the site inspection and his enquiry calls to the Department. He had even retained the receipt for his "second" letter. Yet, he had forgotten the details of his "first" letter and did not keep the receipt for that. We, therefore, doubted the credibility of his statements.

Rent Dispute

7. The owner claimed to have a rent dispute with the complainant. He discovered that the complainant had made unauthorised alterations to the original electrical installations and caused short-circuit in the electric system. He had demanded entry to the complainant's suite for rectification works but was refused. He decided, therefore, to wait till the tenancy expired and the complainant moved out. The owner denied having received E&MSD's notification letter from the complainant.

No Maladministration

8. This Office was of the view that the E&MSD notification was meant for both the owner and the tenant. As a tenant, the complainant was, therefore, also responsible for prompt rectification. Upon receipt of the complaint, E&MSD had conducted several site inspections and successfully demanded the owner to rectify the defects.

9. The Ombudsman found no maladministration on the part of E&MSD, while the information from the complainant was incomplete and dubious.

A case of incomplete and dubious information from the complainant

Environmental Protection Department ("EPD")

Case No. OMB 2008/1263

Contract management – (a) awarding a contract without checking whether the contractor's operation would involve unauthorised land use; and (b) failing to ensure that the contractor had taken out insurance for liability

The Complaint

EPD had awarded a contract to a company for recycling waste tyres. A fire broke out in the workshop and damaged the complainant's property nearby. A complaint was, therefore, lodged against EPD for poor contract supervision.

Unauthorised Land Use

2. The Short Term Waiver for the site did not permit its use for a waste tyres recycling workshop. Although aware of this, EPD did not ask the contractor to relocate the workshop until months after the fire. We found this most improper.

Delay in Taking Out Insurance

3. EPD explained that as the contractor could only start such preparatory work as workshop construction and equipment installation after the tender was awarded, it was not feasible to require the contractor to take out insurance in advance.

4. However, we considered that EPD should not have allowed the contractor to commence operation before securing insurance coverage, particularly as waste tyres recycling was subject to fire risk.

Our Suggestion

5. We suggested that EPD review its procedures for contract management and develop an appropriate monitoring mechanism and guidelines for staff.

A case of poor contract management

Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2008/1175

Garbage collection – failing to regulate effectively noise nuisance and odour from refuse collection vehicles in the early hours

The Complaint

The complainant alleged that at around 4 am every morning, a refuse collection vehicle would come to collect garbage in front of the building where he lived, causing noise nuisance and odour. He had repeatedly complained to FEHD, but the problem remained unresolved due to ineffective regulation by the Department.

Referral by FEHD

2. Site visits by FEHD staff confirmed that a private refuse collection vehicle did come in the early morning hours to collect garbage. As the street remained clean and tidy, there was no contravention of the Public Cleansing and Prevention of Nuisances Regulation. The problem, therefore, was not within the purview of FEHD. Nonetheless, the Department referred the case to the Police and the Environmental Protection Department ("EPD") for action.

Response from EPD

3. Noise nuisance in residential buildings and public places, including that caused by refuse collection vehicles collecting garbage on the roadside, is for the Police to handle. As for smell, some unpleasant smell would inevitably be generated in the course of garbage collection. However, where the complainant consented, EPD staff could conduct an odour prediction assessment at his flat to ascertain whether the unpleasant smell during garbage collection constituted a nuisance.

4. In this case, the complainant declined EPD assistance. However, the Department still investigated the case upon FEHD referral. Records showed that no similar complaint had been received in the past few years. As the complainant refused to disclose his personal information and did not contact the Department, EPD could not conduct any odour

prediction assessment at his flat. Still, it asked the cleansing contractor to consider another location for garbage collection to reduce the nuisance. The contractor complied.

Site Visit by Our Staff

5. Our staff conducted a site visit to the neighourhood in question in the early hours. Garbage was found to be properly packed in black plastic bags by the roadside and there was no unpleasant odour. Later, on arrival of a refuse collection vehicle, workers threw the garbage bags into the loading compartment and the vehicle left at once. The whole process took less than four minutes. Although the compactor of the vehicle did make some noise and emit an odour when compressing the garbage, the problem was not serious.

Our Comments

6. FEHD had followed up the case with due diligence. It had informed the complainant of the progress in time and referred the case to EPD and the Police. EPD had also actively looked into the matter but the complainant declined any direct assistance.

7. FEHD and EPD can only make suggestions for improvement to private cleansing contractors such as when and where to collect garbage. Implementation is not mandatory. We considered the refuse collection process quick and efficient. To ask for an absolutely silent and odour-free collection process was impossible and impractical.

8. In fact, a better solution would be for the Owners' Corporation of the complainant's building to discuss with the neighbouring buildings. They may consider asking the cleansing contractor to take, at some appropriate time, the garbage farther away to an FEHD refuse collection point for collection.

Hospital Authority ("HA")

Case No. OMB 2008/1270

Medical records – failing to provide complete duplicate medical records of a newborn baby

The Complaint

The complainants' son was born in an HA hospital in October 2007. The complainants then applied to the hospital for the baby's duplicate medical records. However, the documents issued by the hospital did not include his hand or foot prints taken at birth.

2. The hospital staff ("Staff A") explained to the complainants that the information in question was kept in the mother's (not the baby's) file and so it had not been provided. Staff A advised the complainants to make a new application. The complainants maintained that they had clearly requested in the application form for their baby's complete duplicate records and that surely such records should include the baby's hand and foot prints. They, therefore, complained against HA for failing to provide them with the records applied for.

Background

3. It was common practice for the hospital to take the foot prints of all newborn babies and keep them in their mothers' files for identification purpose in case of babies getting mixed up. As the foot prints were meant for identification only, the hospital did not regard them as "medical records" and were therefore not kept in the babies' files.

4. In the past, public hospitals generally did not open separate files for newborn babies. The babies' condition was kept in their mothers' files. However, starting from 1 April 2003, public hospitals would open separate files for newborn babies.

Misunderstanding by Staff

5. The hospital explained that Staff A had misunderstood that since the baby's foot prints were kept in the mother's file, they belonged to the mother's data and there was no need to release them. The complainants had, therefore, been advised to make a separate application. Staff A had been unaware that public hospitals had changed their policy to open separate files for newborn babies. She had also failed to seek her supervisor's advice and thus gave the complainants wrong information and inappropriate advice.

6. Upon receipt of our referral of the complaint, the hospital released the foot print records and apologised to the complainants. It also instructed Staff A to seek her supervisor's advice when in doubt so as to avoid similar incidents in future.

A case of misunderstanding of policy by staff

Legal Aid Department ("LAD")

Case No. OMB 2008/0185

Legal advice – giving wrong advice so that the complainant mistakenly filed his application for compensation in the High Court and incurred financial loss

The Complaint

The complainant claimed that he had been dismissed by his employer after sustaining injury at work. In July 2007, he applied to LAD for legal aid to sue the employer for discrimination and for compensation. Allegedly, an LAD staff member had advised him at a meeting that the deadline for filing his lawsuit, to be instituted in the High Court, was 31 October and had drafted a "Statement of Claim" for him. However, the claim was struck out for being taken to the wrong Court and the complainant was asked to pay legal cost. The complainant considered his financial loss a result of the wrong advice by LAD staff.

Comments from LAD

2. In a meeting with LAD law clerk Ms A on 31 October, the complainant indicated that he would file his claim with or without legal aid, Ms A advised him to enquire at the Resource Centre for Unrepresented Litigants of the High Court. That same day, the complainant submitted his litigation documents to the High Court and sent copies to LAD. His application for legal aid was later rejected.

3. According to the Department's policy and guidelines, LAD law clerks would not give legal advice to applicants. Ms A denied having advised the complainant on the time-bar or telling him to take his case to the High Court. With regard to the draft "Statement of Claim", Ms A clarified that she had only prepared a draft statement for the complainant to set out the details of his claim to LAD. The allegation that Ms A had advised the complainant that since he was dismissed on 31 October 2005, the deadline for filing his claim should be 31 October 2007 was obviously contradictory to the litigation documents prepared by him, citing 1 November 2005 as the date of his dismissal.

4. In fact, a letter issued by the Equal Opportunities Commission to the complainant noted that he had to file his claim within 24 months after dismissal. Otherwise, the District Court would not take up the case. The complainant should have realised from this that his case was to be heard in the District Court.

Our Observations and Comments

5. We have examined the draft "Statement of Claim" prepared by Ms A, the "Statement of Claim" submitted by the complainant to Court and relevant documents submitted by the complainant to LAD. We found the evidence to corroborate LAD's version of events.

6. In the circumstances, we considered that there was no substantive evidence to support the complainant's allegations.

Summaries of Selected Cases Concluded by Preliminary inquiries

Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2007/5335

Sports centre facilities – inefficient management of sports venue and unreasonable charges

The Complaint

The complainant alleged that it was always difficult to book a wall for climbing in a particular LCSD sports centre since such sport became available in September 2006. Moreover, the rental was higher than that for similar walls in other districts. He considered that priority should be given to people who wanted to use those walls as there were only a few of them managed by LCSD. Also, there should be a flat rate for their rental.

Response from LCSD

2. LCSD explained that the main arena of the sports centre was designed for multi-purpose and the climbing walls were adjacent to two badminton courts. When these badminton courts were on hire, the walls would be closed to allow adequate space for users of the courts and *vice versa*.

3. This design of the main arena was meant to facilitate better and more flexible utilisation of the venue to cater for the needs of different sports. The Department adopted a "first-come-first-served" policy in accepting bookings of facilities. However, the complainant suggested that notwithstanding such a policy, badminton players were in the majority and the climbing walls were usually closed.

4. Upon receiving this complaint, LCSD adopted a new measure. It renumbered the badminton courts so that the courts farthest from the climbing walls would be rented out first, to give the public a better chance to book the walls. However, in fairness and for better use of venue, LCSD considered it inappropriate to set aside any specific time slot for priority bookings by climbing wall users.

5. The rental for climbing walls were based on their size. Those with an area of 100 square metres or more would be charged at a higher rate. LCSD had no plan to establish a fixed rental for such facilities.

Our Comments and Recommendations

6. LCSD had promptly replied to the complainant and reviewed the booking procedures to give climbing fans a better chance to use the climbing walls.

7. Nonetheless, this Office noticed that despite LCSD's new measures to rent out the badminton courts farthest from the climbing walls first, its staff could only encourage the public to cooperate. If hirers insisted on renting the courts adjacent to the climbing walls, the staff would comply.

8. We, therefore, suggested that LCSD should further study and review to establish more stringent procedures, requiring the public to book the badminton courts farthest from the climbing walls first. Moreover, as the climbing walls and the adjacent badminton courts would not be used at the same time, it should be impossible for simultaneous users of either facility to cause any injury to the other party. Requiring the public to pay more for a so-called "buffer area" was unnecessary and thus unfair. LCSD should exclude the "buffer area" in the calculation of the rental for the climbing walls.

LCSD's Follow-up Measures

9. LCSD eventually accepted our suggestion to exclude the "buffer area" in the calculation and adjusted the rental accordingly. The Department was also considering our suggestion on further improving the chances of the public for renting the climbing walls.

A case of faulty procedures

Water Supplies Department ("WSD")

Case No. OMB 2008/1489

Water charges – failing to follow up properly a report of sudden increase in water charges

The Complaint

The latest water charges for the flat of the complainant's mother suddenly rose from about $100 to over $500. On behalf of her elderly mother, the complainant called the Customer Telephone Enquiry Centre ("the Centre") of WSD to enquire. She pointed out clearly to the WSD staff that the recorded water consumption had soared after the Department's replacement of the water meter. She, therefore, suspected that it might have something to do with the new meter. A few days later, she called the Centre again, stating that her own investigations had revealed that the meter had probably been wrongly swapped with their neighbour's. WSD staff subsequently paid a site visit but thereafter they neither contacted her or her mother nor rectified the wrongly connected meters.

Response from WSD

2. When the complainant called the Centre to raise formal dispute on the water charges, WSD staff had noted down the matter and advised that she did not have to pay the charges for the time being. A site visit was then conducted together with the complainant. The meters were confirmed to have been inadvertently swapped and could be rectified simply by amending the serial numbers of the meters in its computer system.

3. Accordingly, WSD amended the data in its computer system, issued a letter to the complainant's mother on the findings, the follow-up action and the adjusted water charges. The Department believed that the complainant might not understand the operation concerned and therefore had wrongly assumed that the meters had to be physically rectified. She, therefore, misunderstood that WSD had not handled her case.

Complaint Not Properly Recorded

4. Our inquiries revealed that the complainant had called the Centre three times on the same day. Although her calls were answered by three different staff members, all of them had repeated the same advice to her: namely, to confirm the meter reading in the water bill as correct and then conduct a simple test on her own for water pipe leakage. If the reasons for the excessive water charges could still not be ascertained, the registered consumer, i.e. her mother, should request the Department in writing to conduct an investigation.

5. In fact, the complainant had clearly explained in her second call that it was impossible for her mother to make a written request because of her age and that the officer receiving the call (Officer A) had already suggested to her (the complainant) that she could raise a formal dispute jointly with her mother by calling the Department. However, in her third call on the same day, another officer (Officer B) again asked them to make a written application. It showed that the Centre had not properly recorded the main points of each conversation between the complainant and its staff for future reference. Since every call of the complainant was treated as a new enquiry, each time she was given much the same answers, wasting time for both parties.

Failure to Explain the Case

6. Meanwhile, the reply issued to the complainant by the WSD Customer Accounts Section only explained the wrong arrangement of the meters and mentioned the adjustment of water charges for the complainant's mother. It did not address her concern as to when the meters would be restored to their rightful position.

7. This Office considered that WSD should have clarified in its reply that the billing problem would be resolved without any need to rectify the meters physically. Had the Department done so, the complainant and her mother would not have been troubled for so long by this incident.

8. In this connection, this Office urged WSD to conduct a review and make improvement.

A case of inconsiderate procedures